THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.11751 of 2006

31.7.2006

Between:

Lt.(Mrs) R.S.Rebecamma, Ex.MNS

… Petitioner

AND

The District Collector, Kurnool

And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.11751 of 2006

ORDER:

The petitioner is Ex-service person having worked in Indian Army in Military Nursing Service (MNS). She was discharged from Army on 02.2.1983. She applied to the District Collector, Kurnool, the first respondent herein – requesting for assignment of agricultural land admeasuring Acs.3.50 in survey No.128 of Mamidalapadu Village near Kurnool. Her request was rejected by endorsement dated 06.2.2004 on the ground that she is not eligible for assignment under Ex-service person quota. Therefore, the petitioner filed W.P.No.9729 of 2004 praying for a writ of Mandamus declaring the action of the respondents in not assigning the land in survey No.128/5B3 admeasuring Acs.3.50 classified as K.C.Canal poramboke as illegal and arbitrary, and for a consequential direction to assign the land. By order dated 20.9.2004, this Court allowed the writ petition directing the respondents to take appropriate action on the application of the petitioner for assignment of the land. This Court also observed that it shall be open to the District Collector to consider the application of the petitioner for assignment of any land other than the land identified by the petitioner. Thereafter, the District Collector issued proceedings on 26.10.2004 rejecting the request of the petitioner for assignment of the land identified by her. She then filed W.P.No.21632 of 2004 seeking similar relief. By an order dated 26.11.2004, this Court disposed of the writ petition at the admission stage directing to consider the application of the petitioner for assignment of the land claimed by her. This Court also observed that if it is not possible to assign the land, proper reasons may be recorded. The petitioner filed contempt cases being C.C.No.75 of 2005 and C.C.No.434 of 2006, which were dismissed by the Division Bench of the petitioner observing that the petitioner should approach the District Collector for appropriate orders. The petitioner, thereafter, allegedly made a representation on 23.5.2006 to the District Collector, in vain. Therefore, she filed the present writ petition, for the

same relief as prayed in W.P.No.9729 of 2004 and 21632 of 2004.

The petitioner appeared as party-in-person. On 15.6.2006, having regard to the submissions made by her, learned Assistant Government Pleader for Revenue (Assignment) was directed to file a counter affidavit. Accordingly, counter affidavit is filed by the District Collector. Having regard to the averments made therein that the petitioner was assigned land admeasuring Acs.2.50 in survey No.603 o f Gargeyapuram Village by patta dated 23.4.2006, this Court adjourned the matter on 24.7.2006 observing that the petitioner should approach the Mandal Revenue Officer, Kurnool (MRO), for obtaining copy of the patta. Today, when the matter is called, the petitioner appeared and made a statement that she is not willing to approach the MRO for taking copy of the assignment order dated 23.4.2006. She requested this Court to pass appropriate orders, as per the averments made in the writ affidavit as well as the reply affidavit. Though a specific averment is made in the counter affidavit that a person cannot seek a writ of Mandamus compelling the revenue authorities to assign the land specified by the applicant, the party-in-person did not advert to this nor is it referred to in the reply affidavit filed by her.

The long and short of the case of the petitioner is that she is interested in getting the land admeasuring Acs.3.50 in survey No.128/5B3 classified as K.C. canal bund poramboke and, therefore, the same should be assigned to her. It is also her case that she is not willing to accept assignment of any other land much less the land now assigned by the MRO. In refuting the contention of the respondents that the canal poramboke cannot be assigned, she relies on an alleged communication of the Superintending Engineer, Irrigation Circle, Kurnool (fourth respondent herein) wherein he expressed no objection to irrigation department to assign the land in survey No.128/5B3. She also alleges in her reply affidavit that all along K.C. canal stretch about 200 KMs, the District Collector assigned land in relaxation of the relevant rules prohibiting assignment of land forming part of water body and, therefore, the petitioner contends that the respondents are bent upon denying her legitimate right to get assignment of the land as per her wishes by reason of her status as Ex-service person.

Learned Assistant Government Pleader submits that in the earlier two judgments of this Court or the Division Bench judgments, the right of the petitioner to claim assignment of land in survey

No.128/5B3 of Mamidalapadu Village was not accepted. This Court only directed to consider the request of the petitioner for assignment of Mamidalapadu land and that after considering the request, the District Collector rejected the claim for assignment of Mamidalapadu land on the ground that the land, which is adjacent to National Highway (NH) No.7 is required for public purpose and that the same cannot be assigned to her. He also submits that the petitioner is already assigned land admeasuring Acs.2.50 in survey No.603 of Gargeyapuram village and, therefore, the petitioner has no cause of action.

This Court, with the assistance of the learned Assistant Government Pleader, has perused the earlier orders passed by this Court and the material placed by the petitioner as well as the respondents. In all the three writ petitions she filed so far W.P.Nos.9729 and 21632 of 2004 and the present writ petition W.P.No.11751 of 2006, she seeks a similar relief. When she approached this Court to enforce the right which she allegedly claims to get the assignment of land in Mamidalapadu Village, this Court did not recognize such right. This Court passed orders to the effect that (i) being a discharged officer of MNS, she is entitled for assignment of the land under the relevant Government orders; and (ii) the District Revenue Officials should consider her request for assignment of the land, if possible asked by the petitioner, and if it is not possible, to assign some other land. The petitioner has not placed before this Court any law which confers a right on a citizen or an Ex-service person to claim a particular land of his/her choice.

It is needless to point out under that the relevant assignment rules and regulations contained in Board of Revenue Standing Orders (BSO) or various Government Orders issued from time to time, the Revenue Officials are required to assign the land to landless and poor persons for the purpose of agriculture/housing subject to availability of the land. If the person is not landless and poor, no such assignment can be made and even if the Government, in their opinion, decided to alienate the land for market value, the same cannot be done keeping in view a particular individual or group of individuals. The Government can auction the land available to fetch maximum price for the benefit of the State. This rule however has exceptions. The assignment of land to freedom fighters/political sufferers and Ex-service personnel would be permissible subject to conditions of their eligibility and availability

of such land.

In this case, no other authority than the District Collector as head of the revenue administration filed an affidavit stating that the land claimed by the petitioner being adjacent to NH.7 is required for public purpose. The petitioner cannot claim a right that can be enforced by a Mandamus in this writ petition. The petitioner has already been assigned land in Gargeyapuram and it is for her either to accept or reject, but she cannot seek such direction from this Court to assign only Mamidalapadu land. The claim of the petitioner is, therefore, vexatious and frivolous. This Court cannot appreciate annoyingly obstinate stand taken by the petitioner in various writ petitions filed by this Court as well as while presenting her case before this Court. This Court holds that the request of the petitioner has been rejected for valid reasons and no interference is called for.

In the result, the writ petition is dismissed. No costs.

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(**V.V.S.RAO, J**)

July 31, 2006.
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